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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,697	08/30/2001	Armin Amrhein	A34463 (071308.0222)	9229
21003	7590	04/06/2005	EXAMINER	
BAKER & BOTTS			CHANG, SUNRAY	
30 ROCKEFELLER PLAZA			ART UNIT	
NEW YORK, NY 10112			PAPER NUMBER	

2121

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/942,697

Applicant(s)

AMRHEIN ET AL.

Examiner

Sunray Chang

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20011130, 20011126</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1 – 5 are presented for examination.

Claims 1 – 5 are rejected.

Information Disclosure Statement

2. The information disclosure statement filed September 9th, 2002 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

The form, PTO-1449, of information disclosure statement (IDS), filed on September 9th 2002, is missing.

Claim Objections

3. Claim 3 is objected to because of the following informalities:

The term, "the technological process", cited in claim 3 has not been forth cited in parent claim 1 or 2. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. **Claims 1 – 5 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Steven J. Altschuler (U.S. Patent No. 6,778,971 and referred to as Altschuler hereinafter), and in view of Terrence L. Blevins (U.S. Patent No. 6,445,963 and referred to as Blevins hereinafter).

(Altschuler as set forth above generally discloses the basic inventions.)

5. **Regarding independent claim 1,**
- Altschuler teaches,

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- A method for the integrating a plurality of automation components in a uniform running level model of a respective runtime system (RTS) of an industrial controller (S); [Abstract, Col. 1, Lines 9 – 20, Col. 6, Line 67 – Col. 8, Line 4]
- a) analyzing running properties of each automation component; [Col. 6, Line 67 – Col. 8, Line 4]
- b) deriving a structure for a uniform running level model from said running properties which satisfies the requirements of said each automation component; [Col. 6, Line 67 – Col. 8, Line 4]
- c) assigning a set of system and user levels tasks into the running level model; [Col. 6, Line 67 – Col. 8, Line 4] and
- d) programming at least one user level. [Col. 6, Line 67 – Col. 8, Line 4]

Altschuler does not teach an industrial controller.

Blevins teaches an industrial controller [Col. 1, Lines 5 – 8, Abstract], for the purpose of using of advanced control blocks.

It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of Altschuler to include "an industrial controller", for the purpose of using of advanced control blocks.

6. **Regarding dependent claim 2,**

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Altschuler teaches,

- prioritizing the system and user level tasks. [Col. 13, Lines 21 – 36]

7. Regarding dependent claim 3,

Altschuler teaches,

- deriving a basic clock of the running level model from one of an internal timer, an internal clock, an external device and a variable which belongs to the technological process. [Col. 14, Lines 50 – 51]

8. Regarding dependent claim 4,

Altschuler teaches,

- user level tasks are loaded into the at least one user level. [Col. 7, Lines 30 – 38]

9. Regarding dependent claim 5,

Altschuler teaches,

- programmed accessing overall functionality from the user programs.

Altschuler does not teach a controller.

Blevins teaches an industrial controller [Col. 1, Lines 5 – 8, Abstract], for the purpose of using of advanced control blocks.

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It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of Altschuler to include "an industrial controller", for the purpose of using of advanced control blocks.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunray Chang whose telephone number is (571) 272-3682. The examiner can normally be reached on M-F 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on (571) 272-3687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-746-3506.

Sunray Chang
Patent Examiner
Group Art Unit 2121
Technology Center 2100
U.S. Patent and Trademark Office

March 30, 2005


Anthony Knight
Supervisory Patent Examiner
Group 3600